

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2020-21		FY 2021-22	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$2,321,847	\$23,000,000	\$2,045,288	
CASH FUNDS		(\$6,000,000)		(\$6,600,000)
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$2,321,847	\$17,000,000	\$2,045,288	(\$6,600,000)

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 946 amends the Revenue Act of 1967. Beginning October 1, 2021, the sales tax rate is reduced from 5.5% to 4%. Each calendar quarter thereafter, the Tax Commissioner must adjust the rate to a rate estimated to provide approximately the same amount of sales and use tax revenue generated had LB 946 not gone into effect. The rate determined January 1, 2022, will go into effect April 1, and so on for each of the following three calendar quarters.

The bill redefines “gross receipts” to include the gross income received for providing a service and to clarify that services are presumed taxable unless a specific exemption applies. Statutory language defining specific services is stricken. The bill also redefines “seller” to include every person engaged in the business of providing services, and “service” to include all activities that are engaged in for other persons for a consideration and that involve predominantly the performance of a service as distinguished from selling or leasing tangible personal property.

The bill also amends Neb. Rev. Stat. sec. 77-27,132 to provide that 0.5% of sales tax is credited to the Highway Allocation Fund. Currently, the statute provides that any sales tax in excess of 5% is credited to such Fund.

The bill is operative October 1, 2021.

Revenue:

The Department of Revenue estimates revenue from services will comprise 41% of the sales tax base, and that the sales tax rate can be adjusted to 3.9%, beginning in January 2022, effective April 1, 2022. The department’s estimate of revenue to the General Fund, the Highway Allocation Fund, the State Highway Capital Improvement Fund, the Highway Cash Fund, and local option sales tax, are as follows:

	General Fund Revenues	Highway Allocation Fund (Cities and Counties)	State Highway Capital Improvement Fund	Highway Cash Fund	Local Sales Tax (Assumes 1.5%)
FY20-21	\$23,000,000	(\$102,700,000)	\$27,800,000	\$33,800,000	\$201,000,000
FY21-22	\$0	(\$105,400,000)	\$28,100,000	\$34,700,000	\$204,000,000
FY22-23	\$0	(\$108,000,000)	\$29,200,000	\$35,600,000	\$211,000,000

The Legislative Fiscal Office agrees with the department’s assumptions regarding the revenue from services and the reduction in rate beginning in FY 21-22, resulting in a General Fund revenue increase in FY 20-21 and increases in local option sales tax revenue. However, we disagree in the distribution of cash fund revenue resulting from the changes to Neb. Rev. Stat. sec. 77-27,132, and as a result, we estimate revenue to the General Fund, the Highway Allocation Fund, the State Highway Capital Improvement Fund, the Highway Cash Fund, and local option sales tax, as follows:

	General Fund Revenues	Highway Allocation Fund (Cities and Counties)	State Highway Capital Improvement Fund	Highway Cash Fund	Local Sales Tax (Assumes 1.5%)
FY20-21	\$23,000,000	(\$24,700,000)	\$27,800,000	(\$33,800,000)	\$201,000,000
FY21-22	\$0	(\$25,300,000)	\$28,100,000	(\$34,700,000)	\$204,000,000
FY22-23	\$0	(\$25,900,000)	\$29,200,000	(\$35,600,000)	\$211,000,000

Expenditures:

The department estimates administrative expenditures for the following staff positions:

- 3.0 FTE Attorney III each fiscal year;
- 13.0 FTE Fiscal Compliance Analyst each fiscal year;
- 8.0 FTE Revenue Auditor I each fiscal year;
- 7.0 FTE Revenue Agent each fiscal year;
- 0.5 FTE Revenue Agent Senior each fiscal year;
- 1.0 Revenue Operations Clerk II each fiscal year;
- 3.0 FTE Office Clerk III in FY 20-21, decreasing to 1.0 FTE thereafter; and
- 1.0 FTE Revenue Tax Specialist each fiscal year.

In addition, the department estimates one-time costs to OCIO of \$70,947 in FY 20-21 and \$48,588 in FY 21-22 for programming changes. Total administrative costs to the department are \$2,321,847 in FY 20-21 and \$2,045,288 in FY 21-22. Based upon the complexity in administration of the sales tax provisions of the bill, there is no basis to disagree with this estimate.

State Agency Estimate

State Agency Name: Department of Revenue				Date Due LFA:			
Approved by: Tony Fulton				Date Prepared: 2/7/2020		Phone: 471-5896	
	FY 2020-2021		FY 2021-2022		FY 2022-2023		
	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	
General Funds	\$2,321,847	\$23,000,000	\$2,045,288	\$0	\$1,940,200	\$0	
Cash Funds		\$61,600,000		\$62,800,000		\$64,800,000	
Federal Funds							
Other Funds		\$98,300,000		\$98,600,000		\$103,000,000	
Total Funds	\$2,321,847	\$182,900,000	\$2,045,288	\$161,400,000	\$1,940,200	\$167,800,000	

LB 946 changes the sales and use tax rate; imposes a requirement on the Tax Commissioner to adjust the new rate in the four calendar quarters of 2022; redefines the taxation of services; and changes the percentage credited to the Highway Allocation Fund from proceeds derived from taxes imposed on the rental or lease of motor vehicles, trailers, and semitrailers for a period more than 31 days.

LB 946 amends the sales and use tax rate: The current sales and use tax rate of 5.5% will end and a new rate of 4% will begin on October 1, 2021. The Tax Commissioner will be required to adjust the rate based on an estimate of what the approximate sales and use tax revenue would have been had the changes in LB 946 not gone into effect. The following schedule for adjusting the rate will apply:

- The Tax Commissioner must determine the adjusted rate on January 1, 2022. The new adjusted rate will take effect on April 1, 2022.
- The Tax Commissioner must re-determine the adjusted rate on April 1, 2022. The new adjusted rate will take effect on July 1, 2022.
- The Tax Commissioner must re-determine the adjusted rate on July 1, 2022. The new adjusted rate will take effect on October 1, 2022.
- The Tax Commissioner must re-determine the adjusted rate on October 1, 2022. The new adjusted rate will take effect on January 1, 2023.

LB 946 redefines the taxation of services. LB 946 ends the past and current treatment of imposing sales and use taxes only on gross receipts from the specific services enumerated in statute. Under Neb. Rev. Stat. § 77-2703(a), LB 946 imposes sales and use tax on the gross receipts from the provision of services in this State. The bill amends the definition of gross receipts under Neb. Rev. Stat. § 77-2701.16 to include gross income received from providing services, adding the presumption that services are presumed taxable unless a specific sales tax exemption applies.

The term service will include all activities that are engaged in for other persons for a consideration and that involve predominantly the performance of a service as distinguished from selling or leasing tangible personal property. The term does not include services rendered by an employee to his or her employer. In determining what a service is, the intended use, principle objective, or ultimate objective of the contracting parties will not be controlling.

LB 946 defines seller in Neb. Rev. Stat. § 77-2701.36 to include every person engaged in the business of providing services the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

LB 946 amends Neb. Rev. Stat. § 77-2704.45 to end the sales and use tax exemption for services that will become an ingredient or component part of a service for ultimate sale at retail. The sales and use tax exemption will only apply to property that will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail.

Neb. Rev. Stat. § 77-27,223 would be amended to include the redefined taxation of services under LB 946 within the county occupation tax imposed on businesses engaged in the sale of admissions to recreational, cultural, entertainment, or concert events.

Finally, the bill harmonizes and adds references to the redefined taxation of services under LB 946 in Neb. Rev. Stat. §§ 77-2701, 77-2701.04, 77-2701.41, 77-2711, and 77-2713.

Neb. Rev. Stat. §77-27,132(b) would be amended to provide that all sales and use tax proceeds from selling or leasing motor vehicles, trailers, and semitrailers for a period more than 31 days will be credited to the Highway Trust Fund, except proceeds equal to a sales tax rate of 0.5% of the sales tax derived from the sale or lease of motor vehicles, trailers, and semitrailers for a period more than 31 days will be credited to the Highway Allocation Fund.

The Department of Revenue (DOR) cannot specifically determine the meaning of “service;” hence, for the purpose of determining the fiscal impact of LB 946, DOR utilized data from the South Dakota Department of Revenue. Based on the analysis of the South Dakota sales and use tax data, DOR assumes the revenues generated from services will be approximately 41 percent of the current tax base. DOR estimates that the sales and use tax rate can be adjusted to 3.9 percent in January 2022 effective April 1, 2022 and will result in no significant change to the General Fund revenues. Under those assumptions, the estimates of fiscal impact of LB 946 for expanding the sales tax base, lower rate, and redistribution method for motor vehicle sales tax as described in Neb. Rev. Stat. § 77-27, 132(b) as follows:

	General Fund Revenues	Highway Allocation Fund (Cities and Counties)	State Highway Capital Improvement Fund	Highway Cash Fund	Local Sales Tax (Assumes 1.5%)
FY20-21	\$ 23,000,000	\$ (102,700,000)	\$ 27,800,000	\$ 33,800,000	\$ 201,000,000
FY21-22	\$ -	\$ (105,400,000)	\$ 28,100,000	\$ 34,700,000	\$ 204,000,000
FY22-23	\$ -	\$ (108,000,000)	\$ 29,200,000	\$ 35,600,000	\$ 211,000,000

The Department will have extensive needs to accomplish the implementation of this bill’s requirements. Based on our experience with LB 312 (2017) doubling the number of permit holders would require the Compliance section of Audit to absorb the increase of work. The number of Discovery and Nexus staff for reviews would double the need for Fiscal Compliance Analysts to 13.0 FTEs. Audit of new permit holders would require an additional 8.0 FTE Auditors. Accounts requiring collection and additional processing of returns will increase the need for Revenue Agents by 7.0 FTEs for the first two years, and 5.0 FTEs the third year. Processing will require a 0.5 FTE Revenue Agent Senior. Licensing and processing errors will require 1.0 FTE Revenue Operations Clerk II and 3.0 FTE Office Clerks III in the first year and 1.0 FTE thereafter. Our Legal and Policy sections will require 3.0 FTE Attorneys III for litigation and legal guidance. The quarterly sales tax rate changes and the dramatic increase in permit holders needing notices and information guides will require 1.0 FTE Revenue Tax Specialist. The Department will need major programming changes to effect the initial and quarterly sales tax rate changes. This will require OCIO charges of \$70,947 the first year and \$48,588 in the second year.

Major Objects of Expenditure

Class Code	Classification Title	20-21	21-22	22-23	20-21	21-22	22-23
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
G31113	Attorney III	3.0	3.0	3.0	\$ 216,700	\$ 213,500	\$ 218,400
A21211	Fiscal Compliance Analyst	13.0	13.0	13.0	\$ 543,300	\$ 535,200	\$ 547,500
A21251	Revenue Auditor I	8.0	8.0	8.0	\$ 359,400	\$ 354,000	\$ 362,200
X29222	Revenue Agent	7.0	7.0	5.0	\$ 267,700	\$ 263,700	\$ 192,700
X29223	Revenue Agent Senior	0.5	0.5	0.5	\$ 22,100	\$ 21,800	\$ 22,300
R29112	Revenue Operations Clerk II	1.0	1.0	1.0	\$ 32,900	\$ 32,400	\$ 33,200
R01113	Office Clerk III	3.0	1.0	1.0	\$ 81,000	\$ 26,600	\$ 27,200
A29621	Revenue Tax Specialist	1.0	1.0	1.0	\$ 54,900	\$ 54,100	\$ 55,300
Benefits.....					\$ 502,900	\$ 495,400	\$ 481,400
Operating Costs.....					\$ 70,947	\$ 48,588	\$ 0
Travel.....							
Capital Outlay.....					\$170,000	\$ 0	\$ 0
Capital Improvements.....							
Total.....					\$ 2,321,847	\$ 2,045,288	\$ 1,940,200